

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSEPH VISCOMI and FIRST DESTINY
REAL ESTATE, INC.,

Plaintiffs,

-vs-

EXCELSIOR INSURANCE COMPANY,

Defendant.

**SECOND AMENDED
LIST OF EXHIBITS
TO BE OFFERED BY
EXCELSIOR INSURANCE
COMPANY AT TRIAL**

Civ. Action No.:
5:08-CV-327, NPM/GJD

DEF. No.	IDENTIFICATION OF EXHIBIT	RELEVANCY
D-1	subject policy of insurance	policy under which plaintiffs' claim is made
D-5	summary of plaintiffs' damages calculated by its public adjuster National Fire Adjustment Company (EUO Exhibit 2)	plaintiffs' alleged damages
D-6	sworn statement in proof of loss for the building(EUO Exhibit 3)	plaintiffs' claim under the policy for damage to the building and material misrepresentations
D-7	statement as to full cost for repair or replacement under the replacement cost coverage(EUO Exhibit 4)	plaintiffs' claim under the policy for damage to the building and material misrepresentations
D-8	sworn statement in proof of loss in regard to the claim for business personal property (contents) (EUO Exhibit 5)	plaintiffs' claim under the policy for damage to the contents and material misrepresentations
D-9	floor plan of first floor of the subject property (EUO Exhibit 6)	subject property as it existed on date of loss
D-10	floor plan of second floor of the subject property (EUO Exhibit 7)	subject property as it existed on date of loss
D-11	National Fire Adjustment Co., Inc. inventory of business personal property dated November 2, 2005 (EUO Exhibit 8)	plaintiffs' alleged damages in regard to the contents and material misrepresentations

D-12	multiple listing of the subject property (EUO Exhibit 9)	value of the property around the time of the loss
D-13	Apex Mortgage Corporation documents regarding subject property (EUO Exhibit 10)	plaintiff's debt and money receipt by the plaintiff which cannot be accounted for
D-14	mortgage documents for 303 Boyden Street, Syracuse, New York (EUO Exhibit 11)	plaintiff's debt and money receipt by the plaintiff which cannot be accounted for
D-15	mortgage documents related to 4251 Route 31, Hastings, NY, settlement date February 8, 2005 (EUO Exhibit 12)	plaintiff's debt and money receipt by the plaintiff which cannot be accounted for
D-16	appraisal report for Apex Mortgage Corporation, June 19, 2003 (EUO Exhibit 13)	plaintiff's debt and money receipt by the plaintiff which cannot be accounted for
D-17	Partners Trust Bank statements for Carol Ann Gallagher, dated January 24, 2005 through September 22, 2005; and November 22, 2005 through December 21, 2005 (EUO Exhibit 14)	plaintiff's debt and money receipt by the plaintiff which cannot be accounted for
D-18	notice of change of assessment dated January 2, 2003 (EUO Exhibit 15)	decreasing value of the subject property
D-19	notice of change of assessment dated January, 2006 (EUO Exhibit 16)	value of the subject property and land after the fire
D-20	Angelo Chiodo invoice for services, dated December 18, 2004 (EUO Exhibit 17)	pre-existing conditions
D-21	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 18)	shows the condition of subject property immediately after the fire
D-22	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 19)	shows the condition of subject property immediately after the fire
D-23	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 20)	shows the condition of subject property immediately after the fire
D-24	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 21)	shows the condition of subject property immediately after the fire

D-25	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 22)	shows the condition of subject property immediately after the fire
D-26	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 23)	shows the condition of subject property immediately after the fire
D-27	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 24)	shows the condition of subject property immediately after the fire
D-28	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 25)	shows the condition of subject property immediately after the fire
D-29	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 26)	shows the condition of subject property immediately after the fire
D-30	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 27)	shows the condition of subject property immediately after the fire
D-31	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 28)	shows the condition of subject property immediately after the fire
D-32	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 29)	shows the condition of subject property immediately after the fire
D-33	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 30)	shows the condition of subject property immediately after the fire

D-34	<i>The City of Syracuse v. Joseph Viscomi</i> , confession of judgment sworn to April 18, 2006; handwritten list of competing demolition estimates dated November 30, 2005; letter from Dept. of Community Development to the plaintiff dated April 17, 2006 (EUO Exhibit 31)	value of demolition expenses
D-35	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 32)	shows the condition of subject property immediately after the fire
D-36	color photograph of subject property after the fire taken by Daniel Vieau, Origin and Cause Expert retained by Excelsior (EUO Exhibit 33)	shows the condition of subject property immediately after the fire
D-37	Exit Realty franchise agreement (EUO Exhibit 34)	vacancy of the subject property and plaintiff's financial condition
D-38	mortgage documents for 4255 Route 31, Clay, New York (EUO Exhibit 35)	plaintiff's debt and money receipt by the plaintiff which cannot be accounted for
D-39	electric service account activity statement for 1130 W. Genesee Street, Syracuse, dated January 14, 2004 through November 10, 2004; and February 11, 2005 through August 15, 2005 (EUO Exhibit 36)	utility usage and vacancy of the subject property
D-40	Viscomi/Gallagher 2002 US individual tax return documents (EUO Exhibit 37)	plaintiff's finances
D-41	Viscomi/Gallagher 2003 US individual tax return documents (EUO Exhibit 38)	plaintiff's finances
D-42	Viscomi/Gallagher 2004 US individual tax return documents (EUO Exhibit 39)	plaintiff's finances
D-43	US income tax return for an S corporation for First Destiny Real Estate, Inc.; 2004 (EUO Exhibit 40)	plaintiff's finances
D-44	Viscomi/Gallagher 2005 US individual tax return documents (EUO Exhibit 41)	plaintiff's finances
D-45	US income tax return for an S corporation for First Destiny Real Estate, Inc.; 2005 (EUO Exhibit 42)	plaintiff's finances

D-47	plaintiff's 2004 short-term capital gains/losses statement - Charles Schwab (EUO Exhibit 44)	plaintiff's finances
D-48	plaintiff's 2005 short-term capital gains/losses statement - Charles Schwab (EUO Exhibit 45)	plaintiff's finances
D-49	plaintiff's Verizon Wireless bills dated October 26, 2005 and November 26, 2005 (EUO Exhibit 46)	plaintiff's activities around the time of the fire
D-50	Charles Schwab duplicate record request for plaintiff of account statements from July 31, 2003 to August 31, 2004; October 1, 2004 to October 31, 2004; February 1, 2005 to March 31, 2005; October 31, 2005 to December 31, 2005 (EUO Exhibit 47)	plaintiff's finances and unsubstantiated alleged use of funds from mortgages
D-51	Charles Schwab account statements September 1, 2004 to September 30, 2004; November 1, 2004 to January 31, 2005; April 1, 2005 to September 30, 2005; November 1, 2005 through January 31, 2006; April 1, 2006 to September 30, 2006 (EUO Exhibit 48)	plaintiff's finances and unsubstantiated alleged use of funds from mortgages
D-53	aerial photograph of subject property (EUO Exhibit 50)	describing and identifying subject property
D-54	aerial photograph of subject property; diagram of street grid (EUO Exhibit 51)	describing and identifying subject property
D-55	check ledger for check numbers 1016-1036; 1115-1243; voided checks 1206 and 1227 (EUO Exhibit 52)	plaintiff's finances
D-59	documents received from the City of Syracuse pertaining to property assessments and requested changes in the assessed value by the plaintiff (EBT Exhibit 55)	value of the subject property at the time of the loss
D-61	claim documents received pursuant to the subpoena duces tecum National Fire Adjustment Company pertaining to a claim for loss to property at 1130 Genesee Street, date of loss November 2, 2005	prior claims and misrepresentations concerning the plaintiffs' claim for contents

D-72	Claim documents received pursuant to the subpoena duces tecum National Fire Adjustment Company pertaining to a claim for loss to property at 1113 Fayette Street, date of loss December 5, 1994	prior claims and misrepresentations concerning the plaintiffs' claim for contents
D-78	Investigator Vieau's diagram of the floor plan of the property included with his expert disclosure which shows where ignitable liquid had been introduced	the fires were incendiary in cause and showing the origin of the fires
D-79	photograph of the subject property after the fire taken by Daniel E. Vieau, Origin & Cause Investigator for Excelsior	origin and cause of the fire and condition of the property immediately after the fire
D-80	photograph of the subject property after the fire taken by Daniel E. Vieau, Origin & Cause Investigator for Excelsior	origin and cause of the fire and condition of the property immediately after the fire
D-81	photograph of the subject property after the fire taken by Daniel E. Vieau, Origin & Cause Investigator for Excelsior	origin and cause of the fire and condition of the property immediately after the fire
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D-102	photograph of the subject property after the fire taken by Daniel E. Vieau, Origin & Cause Investigator for Excelsior	origin and cause of the fire and condition of the property immediately after the fire

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D-128	photograph of the subject property after the fire taken by Daniel E. Vieau, Origin & Cause Investigator for Excelsior	origin and cause of the fire and condition of the property immediately after the fire
D-130	Syracuse Police & Fire Department reports pertaining to the fire to the subject property on November 2, 2005.	origin and cause of the subject fire
D-131	photograph taken by the Syracuse Fire/Police Department of the fire damage to the subject property	origin and cause of the subject fire and the building condition immediately after the fire

D-132	photograph taken by the Syracuse Fire/Police Department of the fire damage to the subject property	origin and cause of the subject fire and the building condition immediately after the fire
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D-155	photograph taken by the Syracuse Fire/Police Department of the fire damage to the subject property	origin and cause of the subject fire and the building condition immediately after the fire
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D-178	photograph taken by the Syracuse Fire/Police Department of the fire damage to the subject property	origin and cause of the subject fire and the building condition immediately after the fire
D-179	photograph taken by the Syracuse Fire/Police Department of the fire damage to the subject property	origin and cause of the subject fire and the building condition immediately after the fire
D-180	photograph taken by the Syracuse Fire/Police Department of the fire damage to the subject property	origin and cause of the subject fire and the building condition immediately after the fire
D-181	documents received from the Wallie Howard, Jr. Center for Forensic Sciences Department of Health, Onondaga County showing test samples being positive for gasoline	cause of the fire
D-182	Syracuse Fire Department report dated June 24, 1996 with respect to the fire located at 201 N. State Street	prior incendiary fire to another one of plaintiff's properties suspected to be caused by gasoline
D-183	Syracuse Fire Department report dated May 28, 1996 with respect to the fire located at 323-35 James Street	prior incendiary fire to another one of plaintiff's properties suspected to be caused by gasoline
D-184	Syracuse Fire Department report dated December 5, 1994 with respect to the fire located at 1113 East Fayette Street	prior incendiary fire to another one of plaintiff's properties suspected to be caused by gasoline
D-185	documents received from attorney Kristen Benson of Smith, Sovik, Kendrick & Sugnet, P.C. under cover letter dated December 8, 2008 pertaining to <i>John Ventre v. Joseph Viscomi</i>	plaintiff's finances and other dishonest acts

D-186	documents received pursuant to the subpoena duces tecum to National Grid provided under cover letter dated November 19, 2008 which includes but is not limited to records regarding utility usage	vacancy of the property
D-188	public records pertaining to taxes owed on 303 Boyden Street for 2005	plaintiff's finances
D-189	public records pertaining to taxes owed on 1130 Genesee Street West (subject property)	plaintiffs' finances and assessed value of the subject property and land
D-190	reservation of rights letter from Excelsior to the plaintiff dated November 3, 2005	coverage issues
D-191	public records regarding judgments against the plaintiff	plaintiff's finances
D-192	article in The Post Standard dated November 3, 2005 regarding the subject fire	vacancy of the property
D-200	plaintiffs' response to interrogatories	discovery
D-205	plaintiffs' response to defendant's request for admission	discovery
D-208	records relating to Excelsior Insurance Company's payment to Apex Mortgage Corp.	substantiation of Excelsior's counterclaim
D-212	documents produced by the plaintiff with respect to a bank account number 320160029353 in the name of First Destiny Real Estate, Inc. with Key Bank - January 31, 2004 through December 31, 2005 - check nos. 1100 through 1113; 1115 through 1168; 1171 through 1205; 1207 through 1226; 1228 through 1235	plaintiff's finances and gambling activities
D-213	documents produced by the plaintiff with respect to Carol Ann Gallagher's bank account number 361550286 with Partners Trust Bank - check nos. 181, 182, 250, 313, 323, 377-381, 383, 385-392, 394, 395, 397	plaintiff's finances

D-214	documents produced by the plaintiff with respect to Joseph Viscomi's personal checking account number 203-71586-1 with HSBC - statements from January 14, 2003 through April 10, 2003; December 11, 2003 through October 13, 2004; November 11, 2004 through September 22, 2005	plaintiff's finances
D-215	documents produced by the plaintiff with respect to credit card records for a City Advantage account number 5466 1602 0754 5599- September 23, 2004 through January 24, 2006	plaintiff's finances and gambling activities
D-217	documents produced by the plaintiff with respect to credit card records with Amazon.com, account number 4640 1820 1249 5911; December 17, 2004 through February 16, 2006	plaintiff's finances
D-219	documents produced by the plaintiff with respect to credit card records for a MBNA account number which ends in 4264 2927 5313 2444; December 2003 through February 2004; April 2004 through October 2004; December 2004 through August 2005	plaintiff's finances and gambling activities
D-220	documents produced by the plaintiff with respect to credit card records for a MBNA account number which ends in 5329 0318 5407 3515; January 2004 through May 2004; July 2004 through September 2004; November 2004 through November 2005	plaintiff's finances and gambling activities
D-221	documents produced by the plaintiff with respect to BSB Bank & Trust, then becoming Partners Trust Bank, accounts no. 0361550286; January 23, 2003 through August 20, 2004; November 22, 2004 through October 24, 2005; December 31, 2005 through January 24, 2006	plaintiff's finances

D-222	plaintiff's partial Verizon phone records for telephone number 315-476-0710; billing dates December 28, 2003; February 28, 2004 through September 28, 2004; November 28, 2004 through January 28, 2005; September 28, 2005	vacancy of the property
D-223	call records for Verizon phone in the name of the plaintiff - phone number 315-685-1168: October 31, 2005 through November 7, 2005	plaintiff's activities on the date of loss
D-224	call records for Verizon phone in the name of the plaintiff - phone number 315-476-0710; records of calls (call detail) October 28, 2005 through November 2, 2005; bills for March 28, 2005, October 28, 2005 and December 7, 2005	vacancy of property and plaintiff's activities on the date of loss
D-225	account activity statement for the plaintiff for electric service at the subject property from January 14, 2004 through August 15, 2005	vacancy of the property
D-228	contract to purchase 132 Hovey Street, dated May 18, 2004	plaintiff's finances
D-229	statement of sale dated December 14, 2003 for 111 Trinity Place, Syracuse, New York	plaintiff's finances
D-232	contract to purchase the subject property by Timothy Thayer, dated November 9, 2006	plaintiff's finances
D-233	statement of sale between the plaintiff and Timothy Thayer, dated June 22, 2007	plaintiff's finances
D-235	letter from Peerless to the plaintiff dated February 15, 2008 denying the claim	coverage issues
D-236	Peerless contents estimate	damages
D-237	substantiation of Peerless expenses	counterclaim
D-238	lease agreement between Robert Gregory and First Destiny Real Estate, Inc.	plaintiff's finances
D-239	toll receipt	plaintiff's activities on the night of the fire
D-240	aerial view map	plaintiff's activities on the night of the fire
D-241	aerial view map	plaintiff's activities on the night of the fire

D-242	letter from plaintiff to Ashley Hayes, Esq.	plaintiff's finances
D-244	First draft of NFA contents inventory (11/02/05)	plaintiff's alleged damages
D-245	Second draft of NFA contents inventory (11/30/05)	plaintiff's alleged damages
D-246	Third draft of NFA contents inventory (12/02/05)	plaintiff's alleged damages
D-247	Fourth draft of NFA contents inventory (12/05/05)	plaintiff's alleged damages
D-248	Final draft of NFA contents inventory (12/12/05)	plaintiff's alleged damages

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Respectfully submitted,

s/Roy A. Mura

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